1944 **K** **File No. C.31 | 44**

Legal Dept

C. BRANCH

Subject:— Prosecutions Grant of Permission for an out-side Counsel to represent the Crown in a Criminal Appeal in the High-Court

P & E

File No, C (31)
44

Gen. 194 e.

286-C.

C O N T E N T S.

Legal Department.

Vol. C. 31/44

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File No. C. 31/44.

Legal Department,
C Branch.

Submitted.

The file C 31/44 has been examined with a view to replace, the important notes etc. on bad quality papers, on good quality papers and the following suggestions are put up for approval:-

1. The following pages may be preserved

(a) as they are -

(b) after getting them retyped

II. The following pages may be removed and filed separately in a provisional file to be destroyed subsequently as being pages of unimportant notes.

Sd/

VGP. 16-7-56.

Motichand & Devidas.

SOLICITORS & NOTARY PUBLIC.

10. Nanabhoy Lane
Fort.

Bombay 16th February 1944.

No. 650.

The Legal Remembrancer

Sir,

Re. Criminal Appeal No. 317 of
1943.

We have the honour to send you herewith on behalf of our client, Mr. Dwarkadas Shrinivas the letter of date signed by him and have to request you to give your sanction thereto.

We have the honour to be,

Sir,

Your most obedient servants.

Sd/ Motichand & Devidas.

VGP. 16-7-56.

 16th February 1944.

To,

The Legal Remembrancer,

Sir,

I have the honour to inform you that I filed a --- criminal complaint being Case No.441/S of 1941 against Gatulal N. Talati for criminal breach of trust under sections 406 and 420 of the Indian Penal Code in respect of 22 Deferred shares of the Tata Iron Steel Co.Ltd.

I entrusted the said shares for the specific purpose of collecting the dividends but he misappropriated the same and committed a criminal breach of trust. The hearing lasted for several months and there is a heavy record and that on my behal and on behalf of the accused, several witnesses were examined and there is a heavy record of the proceedings. It appears that the evidence extends to over 90 pages and that the judge ment delivered by the Hon. the learned Presidency Magistrate First Additional Court, extends to over 25 pages. There were numerous exhibits put in at the hearing of the aforesaid compla aint. In the end the learned Presidency Magistrate found the accused guilty and committed him to 9 months regorous impri sonment and a fine of Rs 300/-. The accused has preferred an appeal being Criminal Appeal No.317 of 1943 and that the hearing of the said appeal is fixed for Monday the 21st Instant

I have also filed a suit against the said Gatulal N.Talati and the Bank of India Ltd for taking possession of the ~~dais~~ said 22 deferred shares of Tata Iron and Steel Co.Ltd.

The said suit is pending in the Hon'ble High Court and I have been appointed a receiver of the said shares.

I desire to instruct Mr.C.K.Dapthtary or some senior Counsel in the matter and I have retained the services of Messrs Motichand and Devidas who also appeared in the learned Magistrate's Court and who will also instruct Counsel and through them I desire to instruct Mr.C.K.Dapthtary or some senior counsel. I hereby undertake to pay to Mr. Daphtary or senior Counsel the special fees that would be charged and I request the Government that instead of the Government pleader, Mr. C.K.Daphtary or some senior counsel may be allowed to appear for the Government. I have authorised Messrs, Motichand and Devidas to retain Counsel and pay them special fees.

Yours early sanction to this is requested.

I have the honour to be,
Sir,
Your most obedient servant.

VGP. 16-7-56.

Submitted.

2. This is a request by a private for permission to engage Solicitors and a Senior counsel at their cost to instruct and appear in an appeal in the High Court instead of the G.P. High Court.

3. Ordinarily the case should be conducted without any fee by the Advocate General and not by the G.P. H.Ct. alone as stated above. (Please see rule 11(3)(e) L.O.(C. of S.) Rules and Rule 15(e) L.O.Rs.

4. It is not clear therefore why more senior counsel than the Advocate General is needed by the applicants. There does not appeal to be anysuch precedent on the record of this offic Even in addition to the Advocate General if they wish to en gage counsel to watch their interest, there does not appear t be any objection provided the Advocate General also appears and the permission could therefore be granted with the approva of A(H) As the Govt. funds are not affected no reference to F.D. is not necessary.

A.S.

Under rule 15(v) of the rule for the conduct of Legal Affairs it is the duty of the A.G. to appear in cases only when he is required to do so by Govt.- not in every case. Otherwise the G.P. is in charge.

2. The proposal seems to me that the applicant will instruc the Senior Counsel through his own Solicitors & pay his fees through them. As the brief will be delivered to counsel by the solicitors the latter alone (and not the G.P.) will be responsible for his fees.

3. The case seems to have originated out of a private com-plaint and there seems to be no objection to the proposal. But as the G.P. must have already appeared in the case, it is desirable to consult him as the proposal is in effect that he should be relieved altogether of his charge of the case).

Submitted.

2. It will hot be possible to hand over the defence of th case in the hands of the outsiders and relieve the G.P. H.Ct entirely of his duties (Rule 30 L.O.Rs), unless these outsid counsel to appear on behalf of the Crown.

3. It is a case against the Crown and Crown and Counsel must necessarily appear and not an independent agent. The aim of this independent agency may be only to seek convic tion while the representative of the Crown will see that justice is done.

A.S.

Mr. Dapthtary may be appointed special Counsel as his fees will be borne by the complainant and as the matter is very urgent the papers may be shown to P.D. after issue.

R.L.A.

It should be specified in the order that the criminal appeal for which counsel is breifed arises out of a private complaint in which Govt. were not previously instructed .

VGP. 16-7-56.

SPECIAL COUNSEL.

Engagement of Mr. C.K.Daphtary to appear on behalf of the Crown in Criminal Appeal No.317 of 1943.

GOVERNMENT OF BOMBAY.

Legal Department,

Resolution No. 1354.

Bombay Castle 19th February 1944.

Letter from Mr. Dwarkdas Shrinivas stating that he had filed Criminal Case No.441/S of 1941 in the Court oef the Presidency Magistrate, Additional Court, against one Gatulal N. Malati, for offences under section 406 and 420 Indian Penal Code; that the Presidency Magistrate found the accused guilty and sentenced him to nine months regorous imprisonment and a fine of Rs.300; that the accused has preferred an appeal to the High Court against the said order, being Criminal Appeal No.317 of 1943 that the applicant desires to engage at his own expense. Mr. C.K.Daphtary to support the convintion and has retained the services of Messrs Motichand and Devidas, Solicitors who appeared for him in the trial Court; and requesting that Government be pleased to permit Mr. Daphtary to appeal for the Crown the applicant undertaking to bear his full costs.

Letter from Messrs. Motichand and Devidas forwarding the same and endorsing the request.

Memorandum to the Government Pleader, High Court, No.1276 dated the 17th February 1944.

Memorandum from the Government Pleader, High Court No.485 dated the 18th February 1944 Stating that as the prosecution has arisen out of a private complaint he has no objection to the engagement of Mr. Dapthtary.

RESOLUTION :- The engagement of Mr. C.K.Dapthtary as Special Counsel in Criminal Appeal No. 317 which has arisen out of a private complaint, is sanctioned.

2. Mr. Daphtary's fees will be payable by the applicant as the criminal appeal for which counsel is briefed arises out of a private

out of a private complaint in which Government were not primarily interested.

By order of the Governor of Bombay,

R.T.K.

P.K.P'903,
for Secretary to Government.

To
The Home Department,
The Finance Department,
The Government Pleader, High Court Bombay,
The Accountant General Bombay,
Mr. C.K.Daphtary.

VGP. 16-7-56.